87-1645

Supreme Court, U.S.
FILED
MAR 31 1988
JOSEPH F. SPANIOL, JR.
CLERK

Case No. _____

United States Supreme Court

October Term, 1988

Irena Kalvans,

Petitioner,

v

Department of Attorney General,

Respondent.

On Appeal from Supreme Court of Michigan

Petition for Writ of Certiorari

Irena Kalvans
In propria persona
3836 Bishop Road
Detroit, Michigan
48224
Tel. 313-884-3318

Question Presented for Review

Did the Michigan Supreme Court violate Petitioner's constitutional right to an impartial decision maker under the due process clause of the Fourteenth Amendment and decisions of the United States Supreme Court when it failed to grant Petitioner'sApplication for Leave to Appeal the bribed decision of the Michigan Court of Appeals?

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Statement of the Grounds

On March 28, 1988, the Michigan Supreme Court denied Petitioner's Application for Leave to Appeal the bribed decision of the Michigan Court of Appeals. The Michigan Supreme Court's denial of leave to appeal is a violation of the decisions of the United States Supreme Court with respect to the federal question of an impartial decision maker as guaranteed by the due process clause of the Fourteenth Amendment. The statutory provision authorizing this Petition for a Writ of Certiorari is 28 U.S.C. #1257(3).

Constitutional Provision Involved

Amendment 14, Section 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens

of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Statement of the Case

In October of 1987, Petitioner filed an Application for Leave to Appeal with the Michigan Supreme Court. In Paragraph 3 of her Grounds for Appeal, Petitioner stated, "The decision of the Court of Appeals violates the Petitioner Appellant's right to due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution because it is the result of bribery." On March 28, 1988, the Michigan Supreme Court denied Petitioner's Application stating, "On order of the Court, the application for leave to appeal is considered and is DENIED, because we are not persuaded that the question presented

should be reviewed by this Court." Petitioner's Concise Statement of Material Proceedings and Facts, stated to the Michigan Supreme Court that, on November 2, 1984, her employment contract as an Assistant Attorney General was terminated by the Department of Attorney General as the result of bribery.' Petitioner's Concise Statement included the following additional facts. On December 11 1985, her fraudulent dismissal was upheld by the Civil Service Commission despite the issuance of findings of fact by the administrative law judge which were unrelated to the record. On June 23, 1986, this decision was affirmed by the Ingham County Circuit Court because of bribery. On October 13, 1987, the Court of Appeals affirmed the circuit court because of bribery and fraudulently re-

cited that the decision was supported by the record. Arthur Lombard and Frederica Lombard communicated to Petitioner that they would have her dismissed with: "silly cons;" "garbage;" "crap;" "shit;" "makeup;" "overruled cases and repealed statutes;" and "a bunch of bullshit." The Lombards also communicated to Petitioner that they would have the fraudulent dismissal upheld at appellate levels by bribery. The Lombards further communicated to Petitioner that they would murder her to put a "cap" on their "Million Dollar Laugh." This Court is Petitioner's last resort to have her fraudulent dismissal reversed inasmuch as all prior decision makers ignored the obvious perjury and the black and white frauds orchestrated by the Lombards in the record of Petition-

er's dismissal.

Argument

The due process clause of the Fourteenth Amendment guarantees to Petitioner the right to an impartial decision maker. In re Murchison, 349 U.S. 133, 136, 138; 75 S. Ct. 623; 99 L. Ed. 942 (1954) held that a fair trial in a fair tribunal is a basic requirement of due process and that fairness requires an absence of bias:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases." (page 136) ***
>
> "Thus the judge whom due process requires to be impartial in weighing the evidence presented before him, called on his own personal knowledge and impression of what had occurred in the grand jury room and his judgment was based in part on this impression, the accuracy of which could not be tested by cross-examination." (page 138)

The Michigan Court of Appeals was biased

against Petitioner because of bribery by the Lombards and the Michigan Supreme Court, in denying Petitioner leave to appeal, thereby denied Petitioner her constitutional right to a fair tribunal, as enunciated in Murchison, supra.

Aetna Life Insurance Co v Lavoie, 475 U.S. 813, 825; 89 L. Ed. 2d 823; 106 S. Ct. 1580 (1986) ruled that due process requires a judge to hold the balance between the parties nice, clear and true and not be biased:

> "We conclude that Justice Embry's participation in this case violated appellant's due process rights as explicated in Tumey, Murchison, and Ward. We make clear that we are not required to decide whether in fact Justice Embry was influenced, but only whether sitting on the case then before the Supreme Court of Alabama '"would offer a possible temptation to the average ...judge to ... lead him not to hold the balance nice,clear and true."' Ward 409 U.S., at 60 (quoting Tumey v. Ohio, supra, at 532)."

The bribery of the Michigan Court of Appeals and the denial of leave to appeal by the Michigan Supreme Court deprived Petitioner of unbiased judges as required by Aetna, supra.

Goldberg v Kelly, 397 U.S. 254, 267, 271; 90 S. Ct. 1011; 25 L. Ed 2d 287 (1969) held that an impartial decision maker was an essential requisite of due process:

> "'The fundamental requisite of due process of law is the opportunity to be heard.'" (page 267) ***
>
> "And, of course, an impartial decision maker is essential." (page 271)

The Michigan Court of Appeals, in being bribed by the Lombards, and the Michigan Supreme Court, in denying leave to appeal, failed to accord to Petitioner the due process of law of an impartial decision maker required by Goldberg, supra.

Rochin v California, 342 U.S. 165, 172; 72 S. Ct. 205; 96 L. Ed. 183 (1951) ruled that due process of law requires an evaluation based on a disinterested inquiry:

> "In each case 'due process of law' requires an evaluation based on a disinterested inquiry pursued in the spirit of science, on a balanced order of facts exactly and fairly stated, on the detached consideration of conflicting claims,"

In denying Petitioner's Application for Leave to Appeal the bribed decision of the Court of Appeals, the Michigan Supreme Court denied Petitioner the due process of law of a disinterested inquiry set forth in Rochin, supra.

For the above reasons and because of the foregoing authorities, Petitioner requests this Court to grant her Petition for a Writ of Certiorari.

Irena Kalvans

Michigan Supreme Court

Lansing, Michigan

Dorothy Comstock Riley

Chief Justice

Charles L. Levin

James H. Brickley

Michael F. Cavanagh

Patricia J. Boyle

Dennis Archer

Robert P. Griffin

Associate Justices

Order

Entered: March 28, 1988

81847

SC: 81847

COA: 93763

LC: 85-55530-AA

Appendix

IRENA KALVANS,

Petitioner-Appellant,

v

DEPARTMENT OF ATTORNEY GENERAL,

Respondent-Appellee.

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

0322

March 28, 1988 Corbin R Davis

Clerk

S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

IRENA KALVANS, OCT 13 1987

Plaintiff-Appellant,

v No. 93763

DEPARTMENT OF ATTORNEY GENERAL,

Defendant-Appellee,

_____/

BEFORE: Beasley, P.J., and Cynar and R.C. Anderson*, JJ.

PER CURIAM

Plaintiff appeals from a circuit court order affirming the determination of the Employment Relations Board of the Department of Civil Service that plaintiff was dismissed for just cause from her position as an assistant attorney

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*Circuit judge, sitting on the Court of Appeals by assignment.

general for the Department of Attorney General. We affirm.

On August 29, 1983 plaintiff was transferred to the Worker's Compensation Division of the Department of Attorney General. Initially plaintiff prepared appellate briefs in cases where claims had been filed against the Worker's Compensation Fund. In January of 1984, after plaintiff allegedly became increasingly more antagonistic toward any modification of her briefs, plaintiff's duties were changed. Plaintiff was assigned to prepare special research projects for her supervisors.

From January 20, 1984 until notice of her dismissal on November 2, 1984 plaintiff completed 15 special research projects. During this time, plaintiff's supervisors expressed criticism of her

work product and on numerous occasions returned work for additional research. On July 25, 1984, plaintiff received a conditional service rating based on her undue resistance to modification or review of her briefs to the Workers' Compensation Appeals Board and her unsatisfactory performance on research projects completed since January 20, 1984. Plaintiff was informed that her work status would be reviewed on September 25, 1984. Three research projects formed the basis of plaintiff's September 25, 1984 review. At this meeting plaintiff again received an unfavorable review of her work and the conditional rating was continued. Plaintiff, however, was given an opportunity to review and modify any assignments given to her during this conditional rating period.

Plaintiff responded that she believed her assignments were complete and that she had satisfactorily performed the duties assigned to her.

On October 22, 1984, plaintiff received an unsatisfactory service rating. In the written review, plaintiff's last three assignments were criticized in detail. On November 2, 1984, plaintiff was given written notice of her dismissal (effective November 30, 1984) based on the reasons stated in her conditional and unsatisfactory service rating. Plaintiff filed a grievance with the Department of Civil Service challenging her dismissal. Following a hearing, a hearing officer held in favor of defendant and found that the evidence overwhelmingly established that plaintiff had an "inability or unwillingness to

satisfactorily perform" the assignments given to her. Further, the hearing officer cited plaintiff's "incorrigible attitude toward supervisory review". Thereafter the Employment Relations Board of the Civil Service Commission found that the hearing officer's findings were supported by the record and were sufficient to merit plaintiff's dismissal. Plaintiff appealed the Employment Relation Board's grievance denial to the circuit court. The court upheld the board's decision and found that it was supported by competent, material, and substantial evidence on the whole record and, as such, was a proper exercise of discretion.

Plaintiff claims that the Employment Relations Board's decision was not supported by competent, material, and sub-

stantial evidence and that the board acted arbitrarily in denying her grievance. Both of plaintiff's claims lack merit.

The scope of judicial review of decisions of the Civil Service Commission is limited. Crider v State of Michigan, 110 Mich App 702, 716; 313 NW2d 367 (1981). However, this Court will set aside a decision if it is "not supported by competent, material, and substantial evidence on the whole record", or if a decision is "arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion". MCL 24.306(d) and (e); MSA 3.560(206)(d) and (e).

Upon review of the voluminous record in this case, we find that sufficient evidence was introduced to support the decision of the Civil Service Commission. Plaintiff's work product lacked suffi-

cient legal analysis or interpretation expected of an employee at her level. Her memoranda often times cited lengthy block quotations from undigested legal materials without providing any synthesis or legal analysis, which was necessary to make the memoranda useful to her supervisors. Additionally, plaintiff was given numerous opportunities to revise memorandum in which specific deficiencies had been noted; however, she refused to modify her work. This further evidenced her antagonistic attitude toward review or modification of her work.

It is unclear whether plaintiff was unwilling or unable to complete the assignments given. Nonetheless, the decision of the Civil Service Commission Employment Relations Board was supported

by competent, material, and substantial evidence on the record as a whole. The board did not abuse its discretion in denying plaintiff's grievance.

Affirmed.

/s/ William R. Beasley

/s/ Walter P. Cynar

/s/ Robert C. Anderson